

STATE OF RHODE ISLAND

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

SHANE CASSITY

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**C.A. No. T21-0003
20408502956**

DECISION

PER CURIAM: Before this Panel on March 24, 2021—Magistrate DiChiro (Chair), Associate Judge Almeida, and Magistrate Kruse Weller, sitting—is Shane Cassity’s (Appellant) appeal from a decision of Magistrate William Noonan (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-14-1, “Reasonable and Prudent Speed,” and § 31-15-5 “Overtaking on Right.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On October 2, 2020, Officer Jeffrey G. Furtado (Officer Furtado) of the Pawtucket Police Department issued a summons to the Appellant for the above-mentioned violation. *See* Summons No. 20408502956.

The Appellant contested the charged violation and the matter proceeded to trial on January 13, 2021. At trial, Officer Furtado testified that, on October 2, 2020, he was dispatched to the intersection of George Bennett Highway and Central Avenue in Pawtucket in regards to a traffic light being out. (Tr. 3:11-14). He explained that he exited his cruiser and began directing traffic at the intersection as the traffic had backed up about a quarter mile in all four directions.

Id. at 3:17-20. His police vehicle was parked at the intersection with its lights on, along with another police vehicle. *Id.* at 8:1-6. While directing traffic, Officer Furtado testified that he heard a vehicle traveling westbound, and that vehicle sounded as if it was traveling at a high rate of speed. *Id.* at 3:22-25, 4:1. He then observed a silver Range Rover traveling at a high rate of speed towards the intersection, pass a Toyota Camry on the right-hand side and continue through the intersection where he was directing traffic. *Id.* at 4:1-9. He explained that it was a two-lane road, and the Range Rover passed the Toyota Camry on the passenger side, then both vehicles continued driving in the same direction. *Id.* at 7:6-16. Officer Furtado testified that he was able to obtain the license plate of the vehicle as it passed by him. *Id.* at 4:12-13. He conducted a query of the license plate, and testified that after some additional investigation, he located a license photo for the Appellant and mailed the summons the next day. *Id.* at 5:21-25, 6:1-9.

Officer Furtado further testified that it was raining, and the roads were slick. *Id.* at 5:10-11. He explained that at the intersection of Central Avenue and George Bennett, there are train tracks with a rubberized material that creates a slick surface when it's raining, creating a dangerous area for people who are driving too fast. *Id.* at 5:11-19.

Next, the Appellant testified at trial that he only observed one officer, that there were no lines in the road, and that he only went around the cars in front of him that had their blinkers on and were turning left. *Id.* at 8:17-23. He explained that he did not have room to speed because it was bumper-to-bumper traffic and there were cars everywhere. *Id.* at 9:1-5.

The Trial Magistrate found the officer to be credible and adopted the testimony as his findings of fact. *Id.* at 12:16-17. He rejected the testimony of the motorist in all respects and found the testimony to be less than credible. *Id.* at 12:18-19, 13:24-25. The Trial Magistrate found that the officer personally observed the Appellant pass a Toyota Camry on the right and

there was no indication that the Toyota Camry was making an effort to get out the Appellant's way. *Id.* at 14:1-7. Thus, the Trial Magistrate found the Appellant guilty of the charges of Reasonable and Prudent Speed and Overtaking on the Right. *Id.* at 19:21-22. However, the Trial Magistrate dismissed the charge § 31-14-3, "Conditions Requiring Reduce Speed," as he believed "a conviction on this count is not possible without an actual determined speed, either by radar or clocking." *Id.* at 12:8-13. The Appellant subsequently filed this timely appeal.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

"The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions or decisions are:

- "(1) In violation of constitutional or statutory provisions;
- "(2) In excess of the statutory authority of the judge or magistrate;
- "(3) Made upon unlawful procedure;
- "(4) Affected by other error of law;
- "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I.

1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, the Appellant argues that there were “procedure [sic] errors” in handling this case and he wanted to be properly represented by counsel. *See* Appellant Notice of Appeal. However, the Appellant did not articulate the specific procedural errors. The Supreme Court has deemed an issue waived “when a party simply states an issue for appellate review, without a meaningful discussion thereof.” *See Palange v. Palange*, 243 A.3d 783, 786 (R.I. 2021). Thus, because the Appellant did not discuss or elaborate on this issue, this Panel deems the issue waived. *See id.*

A

§ 31-14-1 Reasonable and Prudent Speed

On appeal, at oral argument, the Appellant’s counsel argues that Appellant cannot be convicted of § 31-14-1 without prima facie limits. Specifically, Appellant’s counsel contends the only way to be convicted of § 31-14-1 without prima facie limits, is to inform the motorist that the excess speed was unreasonable, inform the motorist of the special hazard or that the speed was that which the motorist could not control or where a collision occurred. Furthermore,

Appellant's counsel argues that §§§ 31-14-1, 31-14-2, 31-14-3 should be read together in order to sustain a conviction.

Section 31-14-1 "Reasonable and Prudent Speeds" provides in relevant part:

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care. Violations of this section are subject to fines enumerated in §31-41.1-4.

Upon interpreting the relevant statute, our Supreme Court has mandated that § 31-14-1 must be read in conjunction with §§ 31-14-2 and 31-14-3. *See State v. Campbell*, 97 R.I. 111, 113, 196 A.2d 131, 132 (1963). In *Campbell*, the Supreme Court has found that the language in § 31-14-1 standing by itself does not meet the constitutional requirement of reasonable certainty. *See id*; *see also State v. Scofield*, 87 R.I. 78, 138 A.2d 415 (1958). Moreover, the language of § 31-14-1 standing alone is so lacking in definiteness that a person of ordinary intelligence could not know at what speed he or she could drive within the law. *See Campbell*, 97 R.I. at 113, 196 A.2d at 132. Therefore, to charge a motorist with an unreasonable speed in violation of § 31-14-1, there must be more. *See State v. Luty*, 109 R.I. 490, 492, 287 A.2d 634, 636.

The Supreme Court has defined the 'more' requirement as making certain that which is uncertain, meaning "to advise the operator that the speed at which he was traveling was unreasonable because it was in excess of the limits designated in § 31-14-2, or because he had failed to reduce his speed when he encountered one of the hazards specified in § 31-14-3." *See id*. As the "principal element of the offense is the operation of a vehicle at an unreasonable speed . . . certainty is attained by specifying the conduct which made that speed unreasonable." *See State v. Gabriau*, 113 R.I. 420, 423, 322 A.2d 30, 32 (1974). Therefore, the Court instructed

that a complaint charging a defendant with § 31-14-1 must reference the standards of §§ 31-14-2 or 31-14-3, in order to apprise a driver of the legislative standard for determining a “reasonable and prudent speed” in the circumstances in which he finds himself. *See Campbell*, 97 R.I. at 113, 196 A.2d at 132.

Here, the record reflects that Appellant was charged with both §§ 31-14-1 and 31-14-3. *See* Summons No. 20408502956 (Summons). The officer specifically listed on the Summons the conditions that required reduced speed: wet road conditions, rain, and heavy traffic. Therefore, based on the Summons itself, the motorist was properly advised of the circumstances and the conduct that made the speed unreasonable. *See Gabriau*, 113 R.I. at 423, 322 A.2d at 32.

Moreover, Officer Furtado testified that at the intersection of Central Avenue and George Bennett the traffic light was out and traffic was backed up in all directions. (Tr. at 3:11-20). There was also a railroad crossing at that intersection, which is a condition requiring reduced speed as defined in § 31-14-3. The Trial Magistrate agreed with Officer Furtado, adopting his testimony as his findings of fact. *See id.* at 12:16-20. Thus, by finding the Appellant guilty of the charged violation of § 31-14-1, “Reasonable and Prudent Speeds,” the Trial Magistrate found that the Appellant was traveling at a speed greater than was reasonable and prudent under the weather conditions of rain, wet road conditions, and heavy traffic as he approached the intersection with the actual hazard of a traffic light being out and a railroad crossing. *See id.* Based on the record, we defer to the Trial Magistrate’s decision and conclude that the decision is supported by legally competent evidence and not affected by error of law. *See Link*, 633 A.2d at 1348.

B

§ 31-15-5 Overtaking on the Right

On appeal at oral argument, Appellant's counsel argued that Appellant could not be charged with § 31-15-5 because the vehicle which the appellant overcame was stopped, and, thus there can be no overtaking violation. Moreover, Appellant's counsel argued that the officer's testimony alone was insufficient to prove the violation because the testimony was silent on whether the overtaken vehicle was moving or not.

Section 31-15-5, "Overtaking on the Right," provides in relevant part:

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles. Violations of this section are subject to fines enumerated in § 31-41.1-4.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the movement in safety. In no event shall the movement be made by driving off the pavement or main-traveled portion of the roadway.

Appellant's counsel contends that this Court's decision in *State v. Aponte-Martinez*, required the overtaken vehicle to be moving to sustain a violation of § 31-15-5. RITT No. M19-0014 (RITT 2019). However, this Panel disagrees. The Panel finds that this Court's decision in *Aponte-Martinez*, is inapplicable here as the circumstances in that case involved a motor vehicle collision, and that is not the case in the instant matter. *See id.* at 2. Moreover, the Panel finds there is no language in the statute that requires or suggests the overtaken vehicle must be moving. *See* § 31-15-5.

This Panel also finds there was competent evidence in the record to support a violation of § 31-15-5. The Trial Magistrate accepted Officer Furtado's testimony and adopted his testimony as his findings of fact. (Tr. at 12:16-20). In doing so, the Trial Magistrate found that Officer Furtado observed the Appellant overtake the other vehicle on the right, and then both cars proceeded through the intersection. *Id.* at 14:1-7.

As this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact[,]” it will not disturb the Trial Judge's determinations regarding the veracity of the witness' testimony. *See Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537); *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076). Consequently, this Panel is satisfied that the Trial Judge's decision was not clearly erroneous in light of the evidence presented.

V

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sec. 31-41.1-8(f)(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Michael DiChiro, Jr. (Chair)

Associate Judge Lillian Almeida

Magistrate Erika Kruse Weller

DATE: _____